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Letter dated 23 December 2016 from the Chair of the Informal Working Group on International Tribunals addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Informal Working Group on International Tribunals containing an account of the Group's activities from 1 January to 31 December 2016 (see annex).

I would be grateful if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Elbio **Rosselli**
Chair
Informal Working Group on International Tribunals

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Annex

Report of the Informal Working Group on International Tribunals for 2016

I. Introduction

1. The present report is to inform the Security Council of the work of the Informal Working Group on International Tribunals from 1 January to 31 December 2016.

II. Organizational matters

2. The Working Group was established on an informal basis in 2000 to consider matters relating to the United Nations and United Nations-assisted tribunals, in particular the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Working Group consists of the legal advisers of the missions of the members of the Security Council and is assisted by the Office of the Legal Counsel of the Office of Legal Affairs and the Security Council Affairs Division of the Department of Political Affairs.

3. Until 2007, the Working Group's chairmanship followed the monthly rotation of the presidency of the Security Council and it met only on an ad hoc basis. At the end of 2007, given the intensive work relating to residual issues and the completion strategies of the Tribunals pursuant to resolutions 1503 (2003) and 1534 (2004), the Working Group decided to appoint a single Chair and started meeting on a regular basis. Subsequently, the Chair was held by Belgium (2008), Austria (2009 and 2010), Portugal (2011), Guatemala (2012 and 2013) and Chile (2014 and 2015). Uruguay had the honour of chairing the Working Group in 2016.

4. During the reporting period, the Working Group held three meetings, including with the Presidents and the Prosecutor of the International Tribunal for the Former Yugoslavia and the principals of the International Residual Mechanism for Criminal Tribunals.

III. Briefings to the Security Council

5. Following previous practice, the Permanent Representative of Uruguay, in his capacity as Chair, briefed the Security Council on the activities of the Working Group on 8 June (7707th meeting) and 8 December 2016 (7829th meeting).

IV. Exchange of views with the Presidents and the Prosecutor of the Tribunal and the Mechanism

6. At its meeting on 7 June 2016, the Working Group held an exchange of views with the Presidents and the Prosecutor of the Tribunal and the Mechanism, in preparation for their briefings to the Security Council on the work and activities of the Tribunal and the Mechanism on 8 June 2016.

7. At its meeting on 6 December 2016, the Working Group held an exchange of views with the Presidents and the Prosecutor of the Tribunal and the Mechanism, in preparation for their briefings to the Security Council on the work and activities of the Tribunal and the Mechanism on 8 December 2016.

8. Following the exchange of views with the Presidents and the Prosecutor of the Tribunal and the Mechanism, the Security Council, in its resolution 2329 (2016), reaffirmed its determination to combat impunity for all those responsible for serious international crimes and the necessity of all persons indicted by the International Tribunal for the Former Yugoslavia being brought to justice.

9. In the same resolution, the Security Council reiterated its request to the Tribunal to complete its work and facilitate its closure as expeditiously as possible with the aim of completing the transition to the Mechanism and, in the light of resolution 1966 (2010), to redouble its efforts to review its projected case completion dates with a view towards shortening them as appropriate and to prevent any additional delays. The Security Council also underlined that States should cooperate fully with the Tribunal and the Mechanism and reaffirmed that staff retention is essential for the most expeditious completion of the Tribunal's work.

V. Reappointments of the President, the Prosecutor and Judges of the Mechanism

10. In a letter dated 23 February 2016 addressed to the President of the Security Council (S/2016/193), the Secretary-General conveyed his intention to reappoint Judge Theodor Meron (United States of America) as President of the Mechanism. The Secretary-General also nominated Serge Brammertz as Prosecutor of the Mechanism. In a letter dated 27 February 2016 addressed to the Secretary-General (S/2016/194), the President of the Security Council stated that members of the Council had taken note of the letter of the Secretary-General, and had also noted the position expressed by the Russian Federation in a letter dated 27 February 2016 (S/2016/197).

11. In resolution 2269 (2016), the Security Council decided to appoint Serge Brammertz as Prosecutor of the Mechanism with effect from 1 March 2016 until 30 June 2018, and thereafter that the Prosecutor of the Mechanism may be appointed or reappointed for a two-year term, notwithstanding article 14, paragraph 4 of the Statute of the Mechanism. The Security Council also decided that, notwithstanding article 10, paragraph 3 of the Statute of the Mechanism, the judges of the Mechanism may be appointed or reappointed for a two-year term; and that, notwithstanding article 15, paragraph 3 of the Statute of the Mechanism, the Registrar of the Mechanism may be appointed or reappointed for a two-year term.

12. In a letter dated 20 April 2016 addressed to the President of the Security Council (S/2016/376), the Secretary-General conveyed his intention to appoint Justice Seymour Panton (Jamaica) as a judge of the Mechanism to fill the vacancy created by the resignation of Judge Patrick Robinson (Jamaica) following his election as a judge of the International Court of Justice. In a letter dated 22 April 2016 from the President of the Security Council addressed to the Secretary-General

(S/2016/377), members of the Security Council took note of the intention expressed in the letter of the Secretary-General.

13. In a letter dated 3 June 2016 addressed to the President of the Security Council (S/2016/526), the Secretary-General conveyed his intention to reappoint 25 judges of the Mechanism for a term of two years, with effect from 1 July 2016 to 30 June 2018. In a letter dated 9 June 2016 addressed to the Secretary-General (S/2016/527), the President of the Security Council responded that members of the Security Council had taken note of the information contained in the letter and of the intentions expressed therein by the Secretary-General.

VI. Evaluation report of the Office of Internal Oversight Services on the Tribunal

14. Pursuant to the request of the Security Council in resolution 2256 (2015), on 12 May 2016 the Office of Internal Oversight Services presented its evaluation report of the International Tribunal for the Former Yugoslavia to the Security Council (S/2016/441). The evaluation report assessed the relevance, effectiveness and efficiency of the methods and work of the Tribunal in implementing the completion strategy during the period 2010-2015, with a focus on the timely completion of judicial activities, staff retention and voluntary separations in the context of the downsizing process.

15. At its meeting on 7 June 2016, the Working Group held an exchange of views on the evaluation report of the Tribunal. The Tribunal reported on the implementation of the Office of Internal Oversight Services recommendations in its report to the Security Council (S/2016/976). The Working Group held further discussions on the evaluation report and the Tribunal's response at its meeting on 6 December 2016.

16. In resolution 2329 (2016), the Security Council commended the Office of Internal Oversight Services for the evaluation report of the Tribunal, and encouraged the Tribunal to include information on the progress towards implementation of the Tribunal's completion strategy in its next six-month report, without prejudice to the primacy given to the completion of its work. The Security Council also welcomed the adoption of the Code of Professional Conduct for the Judges of the Tribunal, which was one of the recommendations in the evaluation report and emphasized the importance of developing a disciplinary mechanism for judges.

VII. Amendment of the Statute of the Tribunal and appointment of an ad hoc judge

17. In a letter dated 5 August 2016 addressed to the President of the Security Council (S/2016/693), the Secretary-General transmitted a letter from the President of the Tribunal requesting the ad hoc and temporary appointment of Judge Burton Hall (The Bahamas) to the Appeals Chamber of the Tribunal for the purposes of any interlocutory appeals from the trial of Ratko Mladić.

18. At its meeting on 18 August 2016, the Working Group held an exchange of views at the request of the President of the International Tribunal concerning the proposed appointment.

19. In resolution 2306 (2016), the Security Council decided to amend the Statute of the International Tribunal for the Former Yugoslavia by adding article 13 *quinquies*, which allows the Secretary-General, at the request of the President of the International Tribunal and after consultation with the President of the Security Council, to appoint a former judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who is also a judge of the International Residual Mechanism for Criminal Tribunals, as a judge of the International Tribunal, to be assigned on an ad hoc and temporary basis to the Appeals Chamber, notwithstanding article 12, paragraph 3 and article 14 paragraph 3 of the Statute.

20. Subsequently, in a letter dated 13 September 2016 addressed to the President of the Security Council (S/2016/794), the Secretary-General conveyed his intention to appoint Judge Burton Hall (The Bahamas) under article 13 *quinquies* of the Statute of the Tribunal. In a letter dated 19 September 2016 addressed to the Secretary-General (S/2016/795), the President of the Security Council stated that the members of the Council had taken note of the intention to appoint Judge Hall as an ad hoc judge of the Tribunal in accordance with article 13 *quinquies* of the Statute.

VIII. Terms of office of the President and the Judges of the Tribunal and reappointment of the Prosecutor

21. In a letter dated 11 November 2016 addressed to the President of the Security Council (S/2016/959), the Secretary-General transmitted a letter from the President of the International Tribunal for the Former Yugoslavia requesting the extension of the terms of office of seven permanent judges and one ad hoc judge of the Tribunal until 30 November 2017 or until the completion of the cases to which they are or will be assigned, if sooner. The President of the Tribunal also requested a further extension of his term of office until 31 December 2017 in order to perform the functions required in closing the Tribunal in line with the completion strategy. In the same letter, the Secretary-General nominated Serge Brammertz for reappointment as Prosecutor of the Tribunal until the completion of the work of the Tribunal.

22. At its meeting on 6 December 2016, the Working Group considered the request for an extension of the terms of office of the judges and the President of the Tribunal, as well as the nomination of the Prosecutor. Following negotiations and once an agreement was reached among its members, and taking into account the projected time frames for the completion of the Tribunal's work, the Working Group made recommendations to the Security Council regarding the request and the nomination.

23. In resolution 2329 (2016) of 19 December 2016, the Security Council took note of the request by the President of the Tribunal for a final extension of the terms of office of the permanent judges of the Tribunal, and strongly emphasizing that the extensions and reappointment should be final, decided under this condition to

extend the terms of office of the following permanent judges of the International Tribunal for the Former Yugoslavia until 30 November 2017 or until the completion of cases to which they are or will be assigned, if sooner: Carmel Agius (Malta), Liu Daqun (China), Christoph Flügge (Germany), Theodor Meron (United States of America), Bakone Justice Moloto (South Africa), Alphons Orie (The Netherlands) and Fausto Pocar (Italy); and to reappoint Mr. Serge Brammertz as Prosecutor of the Tribunal, notwithstanding the provisions of article 16, paragraph 4 of the Statute of the Tribunal, for a term with effect from 1 January 2017 until 30 November 2017, subject to earlier termination by the Security Council upon the completion of the work of the Tribunal. The Security Council also extended the term of office of Judge Carmel Agius as President of the Tribunal until 31 December 2017 or until one month after the completion of the cases to which the judges of the Trial Chamber and Appeals Chamber are or will be assigned, if sooner.

IX. Conclusion

24. In 2016 Uruguay was honoured to assume the chairmanship of the Informal Working Group on International Tribunals, giving it the opportunity to reaffirm its firm commitment to the work of the International Tribunal for the Former Yugoslavia, the successfully closed International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals.

25. Aside from the meetings previously referred to in the present report, the Working Group also held informal meetings, in March, October and December 2016, to discuss different issues.

26. The Chair recognizes the important role of the Working Group and thanks each of its members for their commitment in 2016 and for their efforts in supporting the work of the International Tribunal for the Former Yugoslavia and the Mechanism.

27. The Chair would like this positive attitude to continue in 2017 in order to resolve pending issues. Indeed, concluding the year 2016, some unsolved concerns remain. The Chair would like to highlight the concerns expressed by the President of the International Tribunal for the Former Yugoslavia about staffing, issues related to cooperation and arrest warrants and the concerns expressed by the President of the Mechanism about the detention of one Judge of the Mechanism and its consequences in a current case, the search for eight fugitives indicted by the International Criminal Tribunal for Rwanda and the reintegration of persons who were acquitted or were released after serving their sentences.

28. The Chair is committed to following the developments in the above-mentioned situations in 2017 and calls upon all members of the Organization to actively contribute to resolving those situations, as we remain strong in our belief that international justice must prevail over circumstantial political and financial factors.

29. The Chair emphasizes its commitment to supporting the work of the International Tribunal for the Former Yugoslavia and the Mechanism, giving priority to the dialogue with the Tribunal and the Mechanism, as well as with the States concerned and the Secretariat, for the most expeditious completion of the work.

30. To conclude, the Chair extends its appreciation to the Office of Legal Affairs and the Security Council Affairs Division for their invaluable support during 2016. The Chair would also like to thank the Presidents and the Prosecutor for their commitment to working closely together in furtherance of the mandates and timelines established by the Council. The Chair values the excellent relationship built with all of them during 2016.